

Quarterly Report
OF THE
ATTORNEY GENERAL
OF
ALABAMA



FOR THE PERIOD
FROM JANUARY 1, 1973
THROUGH MARCH 31, 1973

WILLIAM J. BAXLEY, Attorney General

VOLUME 150

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Q U A R T E R L Y R E P O R T

of the

ATTORNEY GENERAL

of

A L A B A M A

For the Period

From January 1, 1973

Through March 31, 1973

**TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS
OF ALABAMA:**

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from January 1, 1973, through March 31, 1973, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State, and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy district attorney of his county. This section also requires that I send a copy of this report to each district attorney and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, County, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

WILLIAM J. BAXLEY

Attorney General

WILLIAM J. BAXLEY

Attorney General

GEORGE L. BECK

Deputy Attorney General

E. RAY ACTON

Executive Assistant

WALTER S. TURNER

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OPINIONS

January 5, 1973

Mr. W. C. Kingsbery, Administrator

Wiregrass Hospital

Geneva, Alabama 36340

Hospitals — Statute of Limitations.

Debt owed by patient to county-owned and operated hospital subject to statute of limitation.

Opinion by Assistant Attorney General Madison.

Dear Mr. Kingsbery:

The question upon which you seek my opinion by your letter of January 3, 1973, is as follows:

Is a debt owed by a former patient to Wiregrass Hospital, which is a county-owned and operated hospital supported by taxation from Geneva County, subject to the Statute of Limitations?

My answer is in affirmative based upon the case of **Montgomery County v. City of Montgomery**, 195 Ala. 197, 70 So. 642, and the many cases cited therein.

It is also my opinion that Section 100, Constitution of Alabama 1901, does not prevent the application of the Statute of Limitations in a proper case where the facts warrant under the case of **Covington County v. O'Neal**, 239 Ala. 322, 195 So. 234.

Cordially yours,

WILLIAM J. BAXLEY
Attorney General

January 5, 1973

Honorable B. P. Lovelace, Jr.

Tax Assessor Lauderdale County

Lauderdale County Courthouse

Florence, Alabama, 35630

Tax Assessors — Ad Valorem Taxes — Exemptions.

Under Title 51, Code of Alabama 1940, Recompiled 1958, Section 2, as amended, subparagraph (k), the Lauderdale

County Farm Bureau, as its property, is exempt from assessment for ad valorem tax purposes.

Opinion by Assistant Attorney General Payne.

Dear Mr. Lovelace:

Your letter dated November 28, 1972 with reference to the ad valorem tax status of the Lauderdale County Farm Bureau is as follows:

"I would like an opinion on the legality of assessing and collecting Ad Valorem Tax on a lot and office building owned and used by the Lauderdale County Farm Bureau.

"Title 51, Chapter 2, Paragraph K" states, 'No license or taxation of any character, except franchise taxes provided in Section 229 of the Constitution of the State of Alabama, shall be collected or required to be paid to the state, or any County or Municipality therein by any State or County Fair, Agricultural Association, etc.'

"Does this section exempt this property even though the Bureau uses it to sell insurance and other license purposes."

Your letter of December 5, 1972, relative to the same matter, in response to my letter to you of December 1, 1972, seeking further information reads as follows:

"Enclosed you will find a copy of articles of Incorporation of Lauderdale County Farm Bureau, Inc.

"I have further checked and found that the Lauderdale County Farm Bureau Inc., rents an office to the Alabama Farm Bureau Insurance Company that sells auto, life & fire insurance to anyone. The Lauderdale County Farm Bureau Inc., does not sell any insurance or engage in any regular profitable business that I know.

"I have exempted the corporation before on basis of a non-profit organization.

"I shall appreciate your opinion."

You further advise me that the office building owned by Lauderdale Farm Bureau is a small one-story structure; that the office space rented to Alabama Farm Bureau Insurance Company is small and that it is your impression a very nominal amount is paid for this office space used by Alabama Farm to sell auto, life & fire insurance.

Section 2, as amended, subparagraph (k), Title 51, Code of Alabama 1940, Recompiled 1958, provides in part as follows:

"No license or taxation of any character . . . shall be collected or required to be paid to the state, or any county or municipality therein, by any . . . agricultural association, . . ." (Emphasis Added)

The subparagraph mentions certain exceptions not pertinent to this inquiry.

The above exemption is directed specifically to an "agricultural association" as such. Whereas, in the case of exemption of property used for religious, educational or purely charitable purposes the exemption runs to the use of the particular property in order to be exempted from ad valorem taxation. Here, it is the entity itself that is exempted. Of course, the property owned by the entity and used by it must have some pertinence toward the purpose for which it was organized. Some of the provisions of the Articles are the following:

ARTICLE TWO

"This corporation shall be a non-profit membership corporation and shall have no capital stock. No part of its net income shall in any way inure to the benefits of any individual member."

ARTICLE THREE

"The purposes, objectives and powers of Lauderdale County Farm Bureau, Inc. are as follows:

"(A) The cultivation and improvement of farms, gardens, and agricultural lands.

"(B) To promote interest in farming and agriculture and otherwise benefit the farming industry."

I have concluded from a study of the Articles of Incorporation, including the minutes attached to same and from my conversation with you, that the Lauderdale County Farm Bureau qualifies under the statute as an "agricultural association." I am further of the opinion that the mere rental of a small portion of the premises to Alabama Farm Bureau is but incidental to the overall operation of the Lauderdale County Farm Bureau, and, hence does not operate to destroy the exempt status of the association.

The answer to your request is that the Lauderdale County Farm Bureau and all of its property is exempt from assessment for ad valorem tax purposes. This assumes, of course, that the affairs of the association are being conducted substantially as is provided by the Articles of Incorporation.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

January 8, 1973

Mr. Windell C. Owens

Attorney at Law

Monroeville, Alabama 36460

Counties — Referendums —

Local Act may be repealed only by Act of Legislature.
(Act No. 5, Regular Session 1971, Monroe County)

Opinion by Assistant Attorney General Lurie.

Dear Mr. Owens:

Your letter of January 2, 1973 has been received.

The matter presented in your communication was presented to the Office of the Attorney General recently and a copy of the opinion rendered at that time is enclosed for your information and guidance.

The question propounded by you, to wit:

“Can the county governing body legally call a special election to obtain the sentiment of the voters toward repealing Act No. 503, Regular Session 1971, pertaining to Monroe County?”

differs only in the fact that your reference is to Act #593 whereas the opinion refers to the levy by the County Commission. The results are the same inasmuch as the referendum authorized by Act #34, 1969 Spec. Sess. pp. 86, as amended, under which the County Commission made the levy would determine whether the populace wanted the tax to remain in force or not: and in that manner the sentiment of the voters would be expressed and that, as you stated in your letter, is the purpose of the election.

Act #503 may be repealed only by an act of the Legislature and it is the opinion of this office that the repeal of this act is not a matter to be submitted to the voters in your county without specific authority for such action.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

January 11, 1973

Honorable Oris E. Davis

Mayor

City of Atmore

Atmore, Alabama 36502

Appropriations — Chamber of Commerce — Funds —
Municipalities — Opinions Overruled, Modified or Distinguished.

1. A municipality may not donate funds, services or office space to a chamber of commerce.
2. A municipality may enter into a contract or lease with a local chamber of commerce where an adequate consideration is provided.
3. Quarterly Report of Attorney General, Volume 132, page 45, and other opinions following the advice contained therein are overruled.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated December 1, 1972, is as follows:

"I would like your opinion on the legality of furnishing office space and utilities in the City Hall to our local Chamber of Commerce. In fact we are furnishing them three badly needed offices plus all office equipment for the sum of only \$1.00 a month and they pay us \$9.00 for utilities but half the time or more they give open invitations to various organizations or salesmen to use their facilities at night without any further pay or permission.

"I shall appreciate it very much if you will give an opinion as to how much we are allowed to give to this organization."

The question presented is whether a municipality is authorized to donate funds, services, and office space to the local chamber of commerce.

In opinions rendered prior to 1968, this office advised that municipalities had no authority to make such donations. On September 13, 1968, the opinion reported in Quarterly Report of Attorney General, Volume 132, page 45, was rendered. In said opinion we advised that a municipality may make an appropriation to the chamber of commerce for the purpose of developing, advertising and promoting the resources of the municipality. The language used in said opinion was very broad and, based thereon, other opinions have been rendered authorizing unrestricted donations to chambers of commerce.

A municipality is an instrumentality of the State and its powers are derived from and must be conferred by the Legislature. **Town**

of **Graysville v. Johnson**, 33 Ala. App. 479, 34 So. 2d 708. It may exercise only those powers granted in express words, those necessarily or fairly implied in or incident to powers expressly granted, or those essential to the declared objects and purposes of the municipality. **City of Bessemer et al. v. Huey**, 247 Ala. 12, 22 So. 2d 325; and **Johnson v. City of Sheffield et al.**, 236 Ala. 411, 183 So. 265.

In the case of **Cliff Evans v. City of Montgomery**, considered by the Circuit Court of Montgomery County in 1972, the Bill of Complaint requested the Court to decide whether the municipality may contribute funds to the Chamber of Commerce of the City of Montgomery, or other worthwhile public endeavors for the good and benefit of the City. The decree of the Court in this case reads, in part, as follows:

"That the practice of the City of Montgomery in granting and providing the use of municipal forces, supplies and equipment for the paving of parking lots and preparing such lots for pavement by grading and otherwise, for private groups, associations and organizations, not controlled by some form of government, be and the same is hereby declared to be in violation of Section 94 of the Constitution of Alabama 1901 and, therefore, illegal."

While the decree above mentioned is not binding upon any municipality in this State except the City of Montgomery, we are convinced that the ruling of the Court is correct and should be followed.

Premises considered, you are advised that the City of Atmore may not donate to the Chamber of Commerce of said City funds, services or office space.

It should here be specifically stated that a municipality may enter into contracts with a local chamber of commerce under which, for an adequate consideration, the chamber of commerce will perform services for which municipal funds may be expended. It should also be stated that, if the municipality has surplus office space, it may lease this space to a local chamber of commerce for an adequate consideration.

The opinion found in Quarterly Report of Attorney General, Volume 132, page 45, *supra*, and all other opinions of this office authorizing a municipality to make unrestricted appropriations to a local chamber of commerce are hereby overruled insofar as said opinions are in conflict with the one expressed herein.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

January 12, 1973

Honorable Charles R. Adair, Jr.

County Solicitor

Dadeville, Alabama

Public Health — Dogs.

Any dog who has bitten a human must be confined for a period of ten days.

Opinion by Assistant Attorney General Van Tassell, Jr.

Dear Mr. Adair:

Reference your letter of December 23, 1972, in which you ask whether it is necessary to confine a dog for a certain period of time when said dog has bitten a human, in the event that the dog has previously been inoculated against rabies.

In my opinion, the answer to your question is in the affirmative. Title 22, Section 114, Code of Alabama 1940, Recompiled 1958, as amended, requires that any dog who has bitten a human be confined for a period of ten (10) days. I can find no language in the statute indicating that the Legislature intended this period of confinement to be applied only to those dogs which have not been inoculated against rabies. It is my opinion that all dogs who bite humans must be confined.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

January 12, 1973

Honorable L. B. Sullivan, Commissioner

Board of Corrections

State of Alabama

Montgomery, Alabama 36104

Board of Corrections — Physicians and Surgeons.

May under certain conditions acquire insurance to cover malpractice of physicians employed by.

Opinion by Assistant Attorney General Sorrells.

Dear Mr. Sullivan:

I have your request for an opinion of this office dated January 3, 1973, which states as follows:

"In order to secure qualified physicians' services at our Medical and Diagnostic Center since the instigation of the numerous suits by the inmates and the recent court order issued by the U. S. District Court, Middle District of Alabama, Northern Division, it has become a prerequisite that we acquire insurance to cover malpractice suits arising from professional services performed at the Medical and Diagnostic Center.

"We were successful in acquiring this insurance from the Travelers Insurance Company in the amount of \$500,000 each claim and \$500,000 aggregate for a period of 30 days renewable every 30 days until further notice at the rate of \$379.00 per month.

"The Comptroller's office refuses to pay this item of expense until we receive an opinion from your office as to the legality of this expenditure.

"The policy has been extended until January 28, 1973 which means that we now owe 2 months premium, and will appreciate your immediate attention to this matter so that we may pay these premiums up-to-date."

Liability insurance is for the purpose of protecting the insured from possible pecuniary loss as a result of a damage suit. As state agencies are not liable for the negligent acts of its employees or agents, such agencies cannot suffer from pecuniary loss arising from such acts. Article 1, Section 14, Constitution of Alabama 1901. Thus, this office has generally held that state agencies are not authorized to expend funds for liability insurance on its employees.

However, we note an opinion dated January 14, 1957 to the Honorable W. A. Gayle, Quarterly Report of Attorney General, Volume 89, page 7, in which this office held that the City of Montgomery can make expenditures for liability insurance on city vehicles.

In that opinion we stated in part as follows:

"... liability policies of insurance may contain many different contractual provisions giving rights and affording protection to one or many different persons. In order to intelligently consider whether or not a city may legally pay premiums on a liability insurance policy, the nature and extent of the coverage of the contract should be stated as different results might be reached as to one type of policy and an entirely different result reached as to others. In many cases this has not been done in the past by those making requests for opinions from this office, and a number of our opinions seem to have assumed

that the policies of liability insurance contain provisions against loss or damage to the name insured only.”

Also, in an opinion addressed to Gen. William N. Fondren, October 7, 1970, this office held that the Board of Corrections could purchase liability insurance on certain vehicles.

In the case of **Hughes vs. Hartford Accident and Indemnity Company**, 223 Ala. 59, 134 So. 461, the Supreme Court of Alabama held that a county board of education had implied authority to contract for and pay the premium on a policy of liability insurance on its school buses.

In that case it was stated:

“ . . . The authorities are abundant, that contracts not contrary to law and the public policy of the state may ordinarily be made for the benefit for third parties directly interested.”
(Citations omitted).

Also, Title 45, Section 7, of the Code of Alabama 1940, Recompiled 1958, in referring to the powers of the Director of the Department of Corrections, states in part:

“ . . . The director shall have all power and authority necessary or convenient to carry out the functions and duties of the department . . . ”

In your request you state that because of numerous suits instigated by inmates and the recent court order issued by the U. S. District Court, Middle District of Alabama, Northern Division, it has become a prerequisite that you acquire insurance to cover malpractice suits to secure qualified physicians' services at the Medical and Diagnostic Center.

Since the acquisition of such insurance is in the public policy and is necessary to carry out the functions of the Department, in my judgment, it is permissible for the Department of Corrections to enter into such a contract and to pay the premiums on a policy of liability insurance for the medical personnel at the Medical and Diagnostic Center.

Therefore, it is my opinion that the Board, in its contract with the doctors, may provide for payment of these premiums as a part of the compensation paid the doctors. Under such provisions, the state could contract to pay premiums on this malpractice insurance for doctors just as it pays premiums on health insurance for other state employees.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

January 16, 1973

Honorable William Walker

Sheriff

Dale County

Ozark, Alabama

Uniform Firearms Act → Carrying Unconcealed Pistol on Public Property.

Title 14, Section 175, Code of Alabama 1940, Recompiled 1958.

Not unlawful to carry unconcealed pistol on public property without a license except in vehicle.

Opinion by Assistant Attorney General Goodwyn.

Dear Sheriff Walker:

Your request for an opinion of this office dated October 10, 1972, is as follows:

"Would you please answer the following question?

"Can a person without a pistol permit strap a gun and holster to his hip and walk down the streets or highways of Alabama?"

Your question is answered in the affirmative.

This office has ruled on a previous occasion that a person carrying a pistol without a permit is not in violation of the law as long as he keeps the pistol unconcealed, out of a vehicle, and on public property. See opinion to Hon. D. C. Nix, Sheriff, Franklin County, under date of July 31, 1941, found in Quarterly Report of Attorney General, Vol. 24, page 126.

Title 14, Section 175, Code of Alabama 1940, Recompiled 1958, states that "No person shall carry a pistol in any vehicle or concealed on or about his person, except on his land, in his own abode or fixed place of business, without a license therefor as hereinafter provided." In **Looney v. State**, 41 Ala. App. 582, 141 So. 2d 535, this statute held to mean that a permit to carry a pistol is not required when a person is afoot and carries the pistol unconcealed.

Although this office strongly disagrees with the law in this case and feels it should be changed, that is not within our province. It must be left to the Legislature to make this practice unlawful.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

January 19, 1973

Honorable Elisha C. Poole

Attorney at Law

Greenville, Alabama 36037

Licenses — Title 51, Section 601, Code of Alabama 1940.

Does not require a license for organization sponsoring speakers for religious, political meetings, etc.

Opinion by Chief Assistant Attorney General Turner.

Dear Mr. Poole:

I have your request for an opinion of this office wherein you asked if Title 51, Section 601, Code of Alabama 1940, as recompiled 1958, applies as to require a license or tax on an individual or organization which sponsors a speaker on religious, political, informational, or educational subjects. You further state that under the arrangement in question, tickets were sold, donations were accepted, or a collection was taken at the meeting for the purpose of defraying the expenses of the meeting.

My response is in a negative.

Title 51, Section 601, Code of Alabama, *supra*, states in part:

"Each person engaged in conducting a theater, vaudeville, or variety show, and each person conducting any other exhibition, show, entertainment, or performance to which an admission is charged and not in this chapter otherwise licensed, shall pay an annual license for each place of business . . ."

It is my opinion that this statute does not apply to the circumstances which you have described. Several organizations such as the John Birch Society, the NAACP, and many others quite often have speakers at their regular or special meetings. It is not unusual for donations or collections to be taken or tickets sold to defray the expenses of the speaker. I am convinced that this statute was not intended to apply to either of those type organizations. The clear intent of this statute is to place a license on performances which would in every day terminology be described as entertainment and not to those of a religious, political, or educational nature.

Sincerely yours,

WILLIAM J. BAXLEY
Attorney General

January 19, 1973

Mr. David B. Carnes

823 Forrest Avenue

Gadsden, Alabama 35901

Counties — Employees — Insurance — Premiums for medical treatment for dependents of employees may be paid by county governing body.

Title 28, Section 351(1) and 351(2), Code of Alabama Recompiled 1958.

Opinion by Assistant Attorney General Lurie.

Dear Mr. Carnes:

Your request for opinion of this office dated January 11, 1973, pertaining to medical treatment insurance premiums for dependents of county employees, has been received.

Your question is answered in the affirmative.

This office in an opinion to Honorable J. M. Breckenridge, City Attorney for Birmingham, under date of October 17, 1972, copy of which is attached for your convenience and guidance, ruled that a municipality may purchase hospital and medical insurance covering its employees and their dependents and pay all or any part of the premium cost.

This opinion, as well as the instant matter, comes within an interpretation of the meaning of Title 28, Sections 351(1) through 351(2), Code of Alabama Recompiled 1958, which applies to counties as well as municipalities and represents the opinion of this office at this time.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

January 19, 1973

Col. Lehman J. Lewis

Deputy Administrator

Alabama Consumer Credit Act

State Banking Department

Montgomery, Alabama 36104

Alabama Consumer Credit Act — Credit Sales.

Use of credit cards does not constitute credit sale under Consumer Credit Act. Persons engaged in business of making sales by accepting credit cards not required to file under Consumer Credit Act.

Opinion by Deputy Attorney General Beck.

Dera Col. Lewis:

This will acknowledge your letter of September 27, 1972, requesting opinion on certain Sections of the Alabama Consumer Credit Act of 1971, said letter reading as follows:

"Section 1(d) defines credit sale as follows: 'Credit sale' refers to any sale with respect to which credit is extended or arranged by the seller.

"Section 18(j) states: 'Any person who is engaged in the business of making credit sales, on which finance charges are paid, and who is not licensed under this Act shall file notification with the Administrator.' . . . etc.

"Question 1 — relates to Section 1(d): Does the use of a credit card (acceptance by seller of credit card for merchandise or services) constitute a 'credit sale'?

"Question 2 — relates to Section 18(j): Is the person who is engaged in the business of making sales, by accepting the use of a credit card, required to file notification with the Administrator of Act No. 2051 under the provisions of Section 18(j) of the Act?"

The answer to question No. 1 is in the negative. There are three general parties to a credit card sale: (1) the originator or issuer of the card. This is the party who is arranging and extending credit, loaning the money, and collecting the interest. (2) the debtor-purchaser who uses the card to purchase goods and services; and (3) the seller who accepts that card in return for goods and services. The seller, whether charged a discount or not by the originator, does not extend nor arrange credit and is a mere conduit through which the money flows from purchaser to originator. Therefore, a credit card sale is not a "credit sale" within the purview of Section 1(d), supra, unless the seller and originator are one and the same.

The answer to question No. 2 is in the negative. Again an exception would lie if the seller and originator were the same.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

January 29, 1973

Honorable David L. Cusic
Executive Director
Alabama Health Study Commission
750 Washington Avenue
Montgomery, Alabama

Public Health — Statutory Construction — Merit System.

1. Title 22 Chapter 1A is sufficient to authorize the State Board of Health to adopt and implement a comprehensive State Health Plan based on regional or district units.
2. In absence of statutory authorization, enabling legislation will be necessary in order for county governments to formulate their own employee merit system.

Opinion by Assistant Attorney General Kendrick.

Dear Sir:

Your request for an official opinion bearing the date of November 15, 1972, is as follows:

"May we seek the advice of your office in identifying potential legal constraints that would inhibit the establishment of regional/district public health departments in the State of Alabama. May we also ask if county enabling legislation is necessary for county governments to formulate their own merit systems for employees.

"The American Public Health Association in a study of state and local health departments had recommended the establishment of regional or district public health departments. For your staff's information I forward to you a copy of that section which describes the basis for this recommendation.

"It appears to me that if there are legal barriers, then these barriers could possibly be found in redefining those existing laws related to the operation of county health departments. These laws would perhaps be specifically related to revenue development, staffing patterns, and scope of authority.

"The Commission is rapidly approaching that point at which this information may become crucial to the decision-making process. For this reason, may we have clarification of these two points as soon as possible. We realize the constraints of time placed upon your office and would appreciate any assistance that you may give us in this process."

Chapters 1 and 1A of Title 22 Code of Alabama 1940, as amended, provide for public health services on the state and local level. Title 22 Section 1 provides for the constitution of a State Board of Health. Section 7 sets out the authorities and duties of the State Board among which are the authority "to adopt and promulgate rules and regulations providing proper methods and details for administering the health and quarantine laws of the State . . ." and "to exercise supervision and control over county boards of health. . . ." Section 4 provides for the constitution of county boards of health and also places such county boards under the supervision and control of the State Board of Health.

Chapter 1A [Section 104(8)] gives the State Board of Health broad powers to prepare and administer a comprehensive State Health Plan. Section 104(2) of Title 22, authorizes the State Board of Health "to accept, receive, retain and administer any and all funds which are now available or which may become available in the future either through donations or appropriations for the preparation and administration or the supervision of the preparation and administration of the comprehensive State Health Plan." Section 104(5) authorizes the State Board to "adopt, revise, abolish, promulgate, and publish rules and regulations to establish standards and procedures for the preparation and administration of the comprehensive health plan." Further, Section 104(1) authorizes the Board to "confer and cooperate with any or all other persons, organizations, or governmental agencies that have an interest in public health problems and needs."

It is the opinion of the Office of the Attorney General that the authority granted to the State Board of Health under Title 22 Chapter 1A is sufficient to authorize the Board to adopt and implement a comprehensive state health plan based on regional or district units. However, if the state board is to continue to utilize the county tax provided for by Title 22 Section 5, a county health board and at least one full time county health officer must be maintained in each county. It is not necessary that this officer be a physician.

We also think it appropriate to call to your attention Title 22 Section 6 which provides as follows:

"No local board of health, or other executive body for the exercise of public health functions, other than the county board of health shall be established or exist in any county or municipality."

With regard to possible conflicts between the opinion expressed above and the provisions of Title 22 Section 6 we point out that the Alabama Supreme Court has held that Title 22 Section 6 does not prohibit legislation inconsistent with it. **Van Sandt v. Bell**, 260 Ala. 556, 71 So.2d 529 (1954). When the legislature enacted the provisions of Chapter 1A the prohibitions of Section 6 were superceded thereby; and, therefore, any actions taken by the State Board pursuant to the authority granted under Chapter 1A would not fall under the proscription of Section 6.

Your second question ~~was~~ whether enabling legislation is necessary for county governments to formulate their own employee merit systems. So far as this office has been able to determine there are no statutes or legislative acts which could be construed so as to authorize county governments to formulate their own merit system for employees of the county. In absence of such statutory authorization, enabling legislation would be necessary before such a system could be put into operation.

Pleaes advise us if we may be of further assistance.

Sincerley,

WILLIAM J. BAXLEY
Attorney General

February 3, 1973

Honorable James F. Berry
City Attorney
City of Cullman
Downtown Plaza
Cullman, Alabama 35055

Condemnation — Eminent Domain — Municipalities —
Property.

A municipality is not authorized to acquire property
by eminent domain to be used as an industrial park.

Opinion by Assistant Attorney General Gish.

Dear Mr. Berry:

Reference is made to your request of January 26, 1973, for an opinion of this office in which you cite Title 37, Section 511(32b), Code of Alabama 1940, Recompiled 1958, and ask whether the City is authorized to acquire property by eminent domain to be used as an industrial park.

Your question must be answered in the negative. The statute which you cite authorizes a municipality to acquire and develop one or more parcels of land for industrial park purposes. Neither this or any other statutes specifically authorizes such property to be acquired by eminent domain.

A municipality has no inherent power of eminent domain and can exercise it only when expressly authorized by the legislature. Statutes conferring such right must be construed in favor of the land owner.

J. Blach & Sons, Inc. v. Hawkins, 238 Ala. 172, 189 So. 726: **City of Birmingham v. Brown**, 241 Ala. 203, 2 So. 2d 305.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

February 8, 1973

Honorable John C. Nicholson
County Solicitor
Office Center Building
Twentieth Street

Counties — Juveniles

Jasper, Alabama 35501

Payment of expenses of a juvenile placed in detention facility in another county discussed generally.

Opinion by Assistant Attorney General Clark.

Dear Sir:

This will acknowledge your letter of January 29, 1973, wherein you request opinion on the following:

"As County Solicitor, I would like to submit a question of law for your interpretation, as follows, with references to Title 13, S. 379, in particular the section which states ' . . . the child may be placed in jail for safekeeping provided no other arrangements for holding the child can be made.'

"When a vacancy exists in a juvenile detention facility in another county, and the juvenile authorities in said county will permit a child from another county to be placed there.

"(a) Will the expense of such detention be a valid charge against the treasury of the county from which the child is committed?

"(b) And if in default of such payment by the county for the expense of detention so incurred, does the Judge-of the Juvenile Court have the authority to order the governing body of the county to reimburse, for institutional care of said child, under Title 13, S. 361.

"Under Title 13, S. 361, which states . . . when jurisdiction and custody of any child has been assumed by the Court: pending disposition of the child by commitment or otherwise, the court of county commissioners, board of revenue, or other governing body, of the county or the juvenile court exercising jurisdiction of said child shall, unless support shall be other-

wise provided, provide for the reasonable and proper support of the child while in the custody of the Court.'

"When a vacancy exists in a juvenile detention facility in another county, and the juvenile authorities in said county will permit a child from another county to be placed there, and a child has been committed to an industrial school and in the opinion of the Court, it is absolutely necessary to hold the child in custody, prior to acceptance by said industrial school.

"(a) Will the expense of such detention be a valid charge against the treasury of the county from which the child is committed?

"(b) And if in default of such payment by the county for the expense of detention so incurred, does the Judge of the Juvenile Court have the authority to order the governing body of the county to reimburse, for institutional care of said child, under Title 13, S. 361."

"It has been held that the court first assuming jurisdiction of the custodial matter retains such jurisdiction until its final order is carried out. *English v. Macon*, supra." **Clements v. Barber**, 270 So. 2d 815.

Title 13, Section 365, Code of Alabama 1940, provides for the transfer between courts of juvenile jurisdiction.

As pointed out in your request, Title 13, Section 361, Code of Alabama 1940, provides that costs of such detention pending vacancy in the juvenile detention center must be borne by the county which has first assumed jurisdiction provided the parents or the child's estate cannot bear the expenses.

The Judge of the Juvenile Court would have authority to order the governing body of the county to make such reimbursements in the event they defaulted in the payment of such expense.

Where the child is held in jail for safekeeping pending transfer to a juvenile detention facility in another county the expense of such detention would be a valid charge against the treasury of the county from which the child is committed and, in the event of default of such payment the Judge of the Juvenile Court is authorized to order the governing body of the county to reimburse, under Title 13, Section 361, Code of Alabama 1940, for such institutional care of said child.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

March 1, 1973

Honorable J. B. Rucker
City Commissioner

City of Montgomery
Room 207

Montgomery, Alabama 36102

Employment — Employers and Employees — Municipalities.

1. Employees of the City of Montgomery are entitled to all holidays granted to State employees.

2. An employee of the City of Montgomery who works on a holiday is entitled either to overtime or compensatory leave at the election of such employee.

Opinion by Assistant Attorney General Gish.

Dear Mr. Rucker:

Reference is made to your request of February 14, 1973, for an opinion of this office, which reads as follows:

"Members of the Fraternal Order of Police have requested that I take steps to obtain pay for them for the two days of mourning set aside by Governor Wallace for the funerals of Presidents Johnson and Truman. The City of Montgomery did not elect to close on those days.

"It is my desire to do what is right for City employees therefore, I would like for you to give me a ruling as to whether or not we should pay city employees for the days, or were they simply a day of mourning and not, in fact, holidays."

In effect, the opinion of this office rendered to Honorable Fred R. Jones, Member, House of Representatives, Alabama Legislature, dated January 29, 1973, advised that the employees of the City of Montgomery were entitled to holidays on the days granted as holidays to State employees because of deaths of Presidents Johnson and Truman.

The question presented by your request is controlled by the statute which governs the civil service system applicable to the City of Montgomery as last amended by Act No. 167, Acts of Alabama 1971, page 4416. The provisions of this statute define "overtime work" to include work performed on holidays and provides that each employee doing any overtime work for the municipality must be granted either overtime pay or compensatory leave at the election of the employee.

Therefore, you are advised that the employees of the City of Montgomery who worked on the days mentioned hereinabove must be granted either overtime pay or compensatory leave. Each employee may choose whether he desires overtime pay or compensatory leave by filing the application contemplated by Act No. 167, *supra*, stating in said application his choice.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

March 7, 1973

Honorable Paul R. Hubbert
Ex Officio Secretary, Alabama
State Tenure Commission
Post Office Box 4177
Montgomery, Alabama 36104

Teachers — Sick Leave.

Pregnant teacher may draw against sick leave when doctor states her condition necessitates her being absent and may return to her job when doctor certifies she is able to work.

Opinion by Assistant Attorney General Turner.

Dear Dr. Hubbert:

I have your request for an opinion wherein you ask that we clarify our opinion rendered to Dr. Leroy Brown, on January 17, 1973.

You ask if a teacher may draw against her accumulated sick days for her absences due to pregnancy; if the teacher may begin her maternity leave at a time when her doctor states her condition necessitates her being absent; if a teacher may return to work when her doctor states that she is able to continue her teaching; and if she has a right to a job when the doctor states she is able to go to work.

My response to your inquiries is affirmative as to each question.

It is my opinion that a pregnant teacher must be placed upon sick leave when her doctor states that her condition requires her absence; that this teacher may return to work when her doctor states that she is able to perform her teaching duties, and has the right to her job when her doctor states she is able to return to work.

Of course, the last answer would have no bearing upon a non-tenure teacher that was terminated in accordance with the tenure law.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

March 9, 1973

Honorable Ray Sheffield
Sheriff
Clarke County
Grove Hill, Alabama

Alabama Alcoholic Beverage Control Board — Intoxicating
Liquors.

Act No. 1265, 1971 Acts, Page 2194.

Possession of Intoxicating Liquors under the provisions of Act No. 1265, 1971 Acts, discussed generally.

Opinion by Assistant Attorney General McQueen.

Dear Mr. Sheffield:

Your request for an official opinion, bearing date of December 21, 1972, reads as follows:

"I respectfully request an official written opinion from your office addressed to me relative to your interpretation of certain aspects of Title 29, Section 262, Code of Alabama 1940 (Recomp. 1958). Specifically, I request your interpretation of how many persons in a 'private residence or place of private residence or the curtilage thereof in any dry county,' who are twenty-one years of age or over, may possess 3 quarts of liquor or 1 case of malt or brewed beverages, when such beverages have been sold or distributed by and through a state liquor store operated by the Alabama Alcoholic beverage control board and the required tax has been paid. For instance, are both a person who occupies a private residence and his or her spouse each allowed to possess the 3 quarts of liquor or 1 case of malt or brewed beverage, or is just one of them allowed to have the specified amount? In the event only one is allowed to have the specified amount, how are we to determine which one of the two is allowed to have the prescribed amount? Also, assume that not only a person and his or her spouse occupies 'a private residence or place of private residence,' but suppose that one of their relatives (i.e. children over twenty-one years of age, a brother, an uncle, etc.) also is domiciled in the same private residence or place of private residence, how many and which ones, if any, of these adults may possess the allowable 3 quarts of liquor or 1 case of malt or brewed beverage? Further suppose that an individual, who is not a relative, boards and pays rent to some one else and lives with him or her in their private residence or place of private residence, how many and which ones of these adults may possess the prescribed 3 quarts of liquor or 1 case of malt or brewed beverage? Suppose further, that one is an adult guest at the private residence or place of private residence of another, may he or she possess the allowed amount of liquor or malt or brewed beverage?

"This inquiry is not a facetious or frivolous one, as my department has been confronted with several of the above sets forth examples, and we have been unable to reconcile this Code section with all the many situations confronted by a law enforcement officer in a dry county when attempting to enforce the mandate of Title 29, Section 98, Code of Alabama

1940 (Recomp. 1958). Therefore, we request an **exhaustive** opinion from your office relative to who may possess the allowable 3 quarts of liquor or 1 case of malt or brewed beverage in a private residence or place of private residence, and your opinion of what is the definition of 'place of private residence.'

"Also, I would appreciate your forwarding this office any other opinions which you have already rendered relative to Title 29, Section 262, especially as they relate to the aspect of possession in 'his motor vehicle.'

"Your prompt attention to this matter will be greatly appreciated."

In an opinion to Honorable Fred B. Simpson, District Attorney, Madison County, under date of March 31, 1972, this office considered the provisions of Act No. 1265 of the 1971 Session of the Legislature, and held as follows:

"This Act makes it legal to possess certain quantities of alcoholic beverages in dry counties in the State of Alabama either in a person's motor vehicle or a private residence or place of private residence or the curtilage thereof.

"In my opinion, the possession of alcoholic beverages in a motor vehicle is limited to the owner of the vehicle and not to any passenger or passengers traveling therein. In other words, in my judgment, only the owner and possessor of the motor vehicle may transport the quantity of beverages set out in said Act in a dry county.

"In my opinion, any person who has a legal right to be in a private residence or place of private residence may possess the quantity of liquor set out in said Act in the residence. In my judgment, this provision of the Act is not limited to the owner of the residence and is broad enough to extend to anyone who has a legal right or just cause to be in the residence. All persons in the residence as above outlined may possess the quantity of liquor set out in said Act."

Applying the principles set forth in the opinion to Mr. Simpson, your first question is answered to the effect that both a husband and wife who reside in the same private residence may legally possess three quarts of liquor and one case of beer. My answer to this question makes it unnecessary to answer the second part of your question.

In answer to your second question, any person such as a son, brother, uncle, etc., living in the private residence of another, may also possess the allowable of alcoholic beverages under Act No. 1265.

Your third question relates to a boarder or renter who lives in the private residence of another. The boarder may also possess the amount of liquor and beer set forth in the Act.

In answer to your fourth question, a person who is an invited guest in the home of another has a legal and just cause to be in the residence and he may also possess the amount of liquor set forth in the Act.

Of course, these answers are based upon the assumption that the persons referred to are twenty-one years old or older.

You also ask that I define for you a place of private residence. This, of course, means any home in which people live either by virtue of ownership or rental. It may be defined as your home or my home.

You will note that the opinion to Mr. Simpson, hereinabove quoted, expresses the opinion of this office insofar as the possession of alcohol in a motor vehicle is concerned.

There is the possibility that attempts will be made by certain individuals engaged in illegal liquor traffic to abuse this Act. Due caution should be used in enforcement of the provisions of this Act in this regard.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

March 22, 1973

Mr. Howard E. Hendrix, Director
Department of Labor
State of Alabama

Montgomery, Alabama 36104

Labor Unions — State Institutions.

Bryce, Partlow and Searcy Hospitals.

Union members justified in going on premises in certain institutions to discuss grievances, etc.

Opinion by the Attorney General.

Dear Mr. Hendrix:

I am in receipt of your letter in which you ask this office to render an opinion concerning the rights of a union to go on the premises of Bryce, Partlow, and Searcy to discuss union business with union members employed at those institutions.

Labor law cases are usually decided on the basis of the facts of each individual case. It is extremely difficult to lay down "hard and fast" rules on labor law that will cover every case. We have been asked a general question: Are union members justified in going on

the premises of certain institutions to discuss grievances, aid their members, etc.? The answer to that general question is yes—in certain circumstances. It is also true that officials at the institutions in question may lay down reasonable regulations as to the time, place, and manner in which discussion with union members may take place.

My opinion in this case is necessarily vague and general because of the absence of specific facts to which the law could be applied. In the future we will be glad to address ourselves to specific fact situations and render opinions based on these facts if the Department of Labor so requests.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

March 23, 1973

Honorable William Walker
Sheriff

Dale County
Ozark, Alabama 36360

Dale County — Sheriffs — Salaries — Prisons and Prisoners — Fees, Commissions, and Allowances.

1. Under the provisions of Act No. 1170, Regular Session 1969 (Title 54, Sections 27(2) — (4), Code of Alabama 1940, (Recompiled 1958), as amended, the Sheriff of Dale County is entitled to a salary of \$15,000.00 per annum in lieu of all fees, commissions, percentages, allowances, charges and court costs.

2. The effective date of the \$15,000.00 salary of the Sheriff of Dale County is the date he took office as such in January, 1971.

3. The Sheriff of Dale County is not entitled to receive allowances for the feeding of prisoners.

Opinion by Assistant Attorney General Hall.

Dear Sir:

Your request for an opinion of this office dated November 14, 1972, in which you ask two questions in regard to the Sheriff's Salary Act is as follows:

"I would like to know if the Sheriff's Salary Bill is retro-

active to September 1, 1971 or September 1, 1972? Please advise of the effective date.

"Also I need some information concerning the feeding of the prisoners. It is my understanding that this is the responsibility of the County, however they don't want it. At the present I am buying the food, preparing the food in my home, and furnishing the stove and electricity for the preparation. How can the County legally let me handle this?"

First, you ask whether the Sheriff's Salary Act is retroactive to September 1, 1971, or September 1, 1972.

The Act to which you refer is Act No. 1170, Regular Session 1969, page 2179, and is now codified as Title 54, Section 27(2) — (4), Code of Alabama 1940 (Recompiled 1958), as amended.

Section 6 of the Act provided that it should become effective upon the expiration of the term of office of the sheriffs who were incumbents when the Act became law. The Act became law when it was approved on September 13, 1969, but did not become effective until after the expiration of the term of office of the sheriffs who were incumbents at that time. Therefore, it could not be retroactive to either of the dates mentioned by you.

Dale County's population fell within one of the exceptions to Act No. 1170 which was declared unconstitutional by the Supreme Court of Alabama in its decision dated September 28, 1972, in the case of **Hoyt B. Hamilton, etc. vs. Autauga County, et al.**, 7th Div., No. 909, Special Term 1972. Since, according to the 1970 Census, Dale County fell within the \$15,000.00 salary bracket when the present Sheriff took office, he is entitled to be paid at that rate.

Your second question relates to the feeding of prisoners.

Section 1 of the Act provides that the salary of the Sheriff shall be in lieu of all fees, compensation, allowances, percentages, charges and costs, except as therein otherwise provided, but that the sheriff and his deputies shall be entitled to collect and retain such mileage and expense allowances as may be payable according to law for returning or transferring prisoners and insane persons to and from points outside the county. This office has previously ruled that such mileage and allowances cannot be kept and retained. Cf. Colume 142, Quarterly Report of Attorney General, page 8, and Volume 144, Quarterly Report of Attorney General, page 7.

Section 2 of the Act provides that all fees, commissions, percentages, allowances, charges and court costs heretofore collectible for the use of the sheriff and his deputies including the allowances and amounts received for feeding prisoners, shall be collected and paid into the general fund of the county, with certain exceptions not here applicable, but the Section further provides that in those counties where

the sheriff's office was then authorized by law to collect the allowances for feeding of prisoners, the sheriff's office shall be allowed to continue to collect and retain said amounts and allowances for the feeding of prisoners.

Since I find no law specifically authorizing the Sheriff of Dale County to receive allowances for the feeding of prisoners, it is my opinion that he is not entitled thereto under the provisions of Section 2 of said Act No. 1170.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

March 27, 1973

Honorable Curtis Morrow
Councilman

City of Fruithurst

Post Office Box 175

Fruithurst, Alabama 36262

Fines — Fine and Forfeiture Fund — Municipalities —
Recorder's Court.

1. A municipality may, by ordinance, constitute the violation of the rules of the road and other misdemeanor statutes as the violation of the ordinance.

2. Fines and forfeitures arising out of the violation of municipal ordinances should be paid into the municipal treasury.

Opinion by Assistant Attorney General Gish.

Dear Mr. Morrow:

Reference is made to your request for an opinion of this office of February 19, 1973, which reads as follows:

"The City of Fruithurst recently established a police department and our police officers are now engaged in police work within the City. We have been informed by Honorable Otis MacMahon, District Attorney, Anniston, Alabama that due to Title 36, Section 5B(1) Code of Alabama, 1940 that fines and forfeitures received by the City of Fruithurst must be paid into the Fine and Forfeiture Fund of Cleburne County. We have enacted a municipal Ordinance making codifying highway laws of the State of Alabama as Municipal Ordinances. Please send

us your opinion as to whether or not all fines and forfeitures collected by the City of Fruithurst, Alabama are to be paid into the Fine and Forfeiture Fund of Cleburne County, Alabama."

The statute to which Mr. MacMahon refers is Title 36, Section 53(1), Code of Alabama 1940, Recompiled 1958. This statute provides that all fines and forfeitures paid by any person convicted in any court of competent jurisdiction for violating the rules and regulations promulgated by the State Highway Commission concerning the operation of motor vehicles upon the highways of this State and any violation of the Alabama Highway Code shall be paid into the general fund or the fine and forfeiture fund of the county.

As we understand your request, the City of Fruithurst has adopted an Ordinance which makes a municipal offense of the violation of the rules of the road and other State statutes concerning the operation of motor vehicles. Such an Ordinance, properly enacted, is valid and a person charged thereunder may be found by the Recorder's Court guilty or not guilty of the violation of such Ordinance rather than the violation of the rules and statutes to which Section 53(1) refers.

Therefore, you are advised that the fines and forfeitures arising out of the violation of the municipal Ordinance to which you refer should be paid into the City Treasury and should not be paid to the County. See *State vs. Springville*, 220 Ala. 286, 125 So. 387.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

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Necessary Supplies-County	Robert G. Davis	Jan. 11	LEPA
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HEALTH DEPARTMENT, STATE Attorneys' Fee-Medicaid Program Solid Waste Disposal Act	Paul I. Robinson	Jan. 1	Health Dept.
	Dr. Ira L. Myers	Feb. 26	Health Dept.
HIGHWAYS Concrete Mixers, Etc.-Weight on Highways	Col. E. C. Dothard	Jan. 12	Pub. Safety

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